

Digital Property Tax & Online Learning

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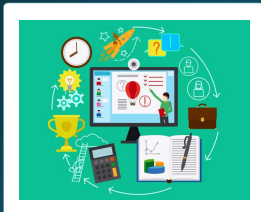


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ONLINE LEARNING

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The E-Learning Revolution



- The global e-learning industry will reach **\$325B** by 2025—up from \$107B in 2015. US market expected to reach \$35B by 2022.
- Corporate training is the fastest growing segment of e-learning industry.
- Self-paced e-learning revenues estimated to be \$16 billion in 2021.
- Popularity due to low cost, ease of accessibility, a shift toward flexible education solutions, advantages of “animated”/interactive learning, prevalence of smartphone use.

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E-Learning in Education

- In 2015, 49% of students had taken an online course in the last 12 months.
- In 2017, 15% of US college students were enrolled entirely in online courses.
- 43% of US college students find digital learning technologies "extremely helpful."
- E-learning enables students to learn 5x more material for every hour of studying or training.



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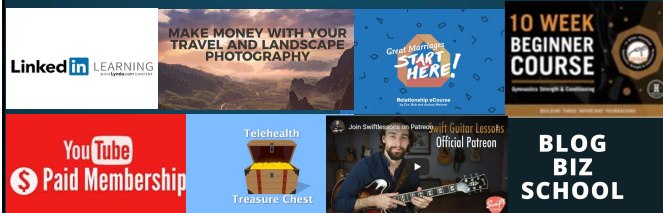
Corporate E-Learning



- 77% of US corporations use e-learning resources.
- Companies use e-learning in a variety of contexts:
 - Specific skill development
 - Health and safety training
 - Personnel issues and new employee onboarding
 - Industry trends and regulations
 - "Soft" skills, such as leadership, people management, problem-solving, collaboration, and communication
- Reduces training time, improves knowledge retention, increases productivity, appeals to modern workforce, and results in increased profits.

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Personal Development E-Learning



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General Principles

- There is no universally recognized definition of "digital products."
- SSUTA has some definitions to which members must adhere, but states are not required to tax or align taxability with the definitions.
- Digital products are often comprised of a mix of TPP, intangible property, and digital services.
- Tax treatment varies widely across states.
 - 30 states tax digital products
 - 22 states tax streaming services
 - 17 states tax cloud computing or "software as a service"

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Federal Landscape

- **(Permanent) Internet Tax Freedom Act (P-ITFA)**
 - Temporary moratorium in 1998; renewed 5x; made permanent in 2016.
 - Bans taxes on Internet access and multiple and discriminatory taxation of electronic commerce.
 - States can't tax an online version of a transaction if its similar offline version is not subject to tax.
- **Digital Goods and Services Tax Fairness Act**
- Federal guidance unlikely

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What Digital Property Does NC Tax?

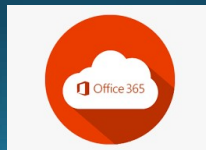
- Delivered or accessed electronically; and
- Is one of the following:
 - Audio work
 - Audiovisual work
 - A book, magazine, newspaper, newsletter, report, or another publication
 - Photograph or greeting card
- Digital codes used to purchase any of these products.



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What Digital Property is Not Taxed in NC?

- Information Services
- Data Processing Services
- Software as a Service (SaaS)
- Video Game Services and Tournaments
- Storage of Electronic Files, Documents, or Records
- Finished artwork



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2019 Expansion



- NC continued trend toward base expansion by expanding scope of digital property tax.
- Effective Oct. 1, 2019, digital property is not required to have a tangible corollary in order to be taxable (S.L. 2019-169).
- Must still be a specified digital product.
- As a result, certain e-learning materials consisting of access to online video catalog of continuing education courses are now taxable.

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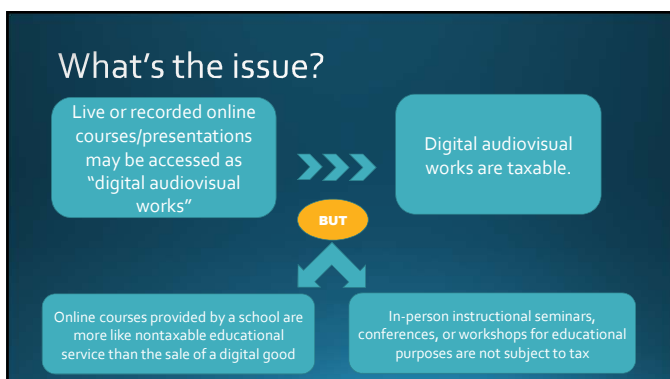
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Scope of Expansion

- Questions emerged whether tax applied to online classes offered by schools and other types of continuing education-type webinars.

An illustration of a classroom setting. A teacher stands at the front, pointing at a large screen displaying a graph. Several students are seated at desks, looking at their laptops. The background is blue with various educational icons like a graduation cap, a lightbulb, and a bar chart.

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Online School Courses

Other State Approaches:

- Option #1: Exempt online educational programs based on the provider:
 - Public or private elementary or secondary school
 - Institution of higher education (defined by federal law)
 - Public or private colleges or universities
 - Community colleges
 - Religious schools/seminaries
 - Proprietary schools
- Require that course be part of school's accreditation or be taken in pursuit of degree, license, or certificate.

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Online School Courses

Option #2:

- Exempt online courses where 1 of the following factors is met:
 - Contemporaneous interaction between students/participants and instructor
 - Non-automated testing or evaluation by instructor
- This would also capture certain presentations that are not offered by a school.

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Other Online "Live" Presentations

- Most states exempt in-person attendance at live "educational" presentations.
- ITFA prohibits "discriminatory taxation" on ecommerce.
- To avoid violating ITFA, states exempt online viewing of these educational presentations.
- States take 2 approaches regarding exemption:
 - Narrow – Exempt online viewing only if ability to participate is substantially similar for in-person attendance.
 - Broad – Exempt online viewing of any type of real-time, live presentation if in-person attendance is not subject to tax, regardless of ability to participate.

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Examples

- Person purchases access to watch a continuing education course online, which is viewed in real-time. Person is able to submit questions to presenter through "chat" feature. → Not taxable under either approach.
- Person purchases access to watch a continuing education course online, which is viewed in real-time. Person is not able to submit questions to presenter. → Not taxable under broad approach; taxable under narrow approach.
- Person purchases access to watch a continuing education course online on-demand as a "video replay." Course is not viewed in real-time and person cannot participate or ask questions. → Taxable under either approach.

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Policy Questions – "Must Do"

1. Clarify tax treatment of online classes provided by schools.
 - By provider?
 - Must course be part of school's accreditation or be taken in pursuit of degree, license, or certificate?
 - Based on nature of product—i.e., "educational service" (instruction and evaluation) vs. a "digital good" (purely self-study video)?
2. Clarify tax treatment of other educational "live" presentations for which NC does not tax in-person attendance.
 - At a minimum, should exempt online version when substantially similar to in-person attendance.
 - Could enact a broader exemption.

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Policy Questions – "Could Do"

3. Any changes to current tax treatment of other types of pre-recorded digital audiovisual works?
 - Under current law, all pre-recorded on-demand lectures, webinars, conferences, videos, regardless of whether educational or otherwise, are taxable digital goods.
 - If so, what is basis for exemption?
- Factors to consider:
 - Treat similar transactions similarly
 - Objective criteria
 - Ease of administration

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